

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 162 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and  
MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?
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COMMISSIONER OF INCOME TAX

Versus

M/S.C.J. PATEL & CO.

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Appearance:

Mr.Mihir Thakore with Mr.M.R. Bhatt for  
MR RP BHATT for Petitioner  
Mr.D.A.Mehta,Mr.R.K.Patel and Mr.B.D.Karia for  
MR KC PATEL for Respondent

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CORAM : MR.JUSTICE S.M.SONI and  
MR.JUSTICE Y.B.BHATT

Date of decision: 26/09/96

ORAL JUDGEMENT (Per Soni J.)

This Reference is made at the instance of the Revenue and the following questions are referred:-

- "1.Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in directing the allowance of Rs.4,08,997/- in view of the principles laid down in the decision of the Gujarat High Court in the case of Patel Brothers 106 ITR 424 ?
2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in directing the allowance of interest payment of Rs.38,671/- ?"

So far as question no.2 pertaining to interest payment is concerned, the same has been withdrawn by the Revenue on 19.1.92. However, the whole of the Reference was withdrawn inadvertently instead of question of interest alone. The Department, therefore, filed MCA 78/93 to restore the Reference for the question other than interest. It is very clearly stated in that MCA in para 3 as under:-

- "3. Though in the reference, certain questions other than the issue relating to interest payment to Raja were referred, due to inadvertence, a letter was addressed by the office of the applicant to withdraw the reference, which is annexed hereto and marked as Annexure B".

It clearly comes out from the application that Department had intended to withdraw the question pertaining to interest only. However, it appears that due to inadvertence, question of interest being question no.2, has not been withdrawn and the other question, which was not required to be withdrawn, has been withdrawn and that is how the reference was restored. Therefore, we make it clear on reading MCA and with the consent of parties' learned Advocates that question no.2 pertains to interest is withdrawn and not question no.1, which pertains to messing expenditure. As question no.2 is withdrawn, the same need not be answered.

So far as question no.1 is concerned, after the above reference was made, necessary provision of sec.37 (2B) is amended by Finance Act 1983 and an Explanation is added. However, that Explanation is made retrospective with effect from 1.4.76. When the Department had considered the case of the assessee, the same was considered in the light of unamended provision of Sec. 37 (2B) of the Income-tax Act. As the Act is now amended with retrospective effect and the case of the assessee is not considered in the light of the amended provisions, it will be necessary to remand this matter back to the

department to consider the case of the assessee in the light of the said amendment as well as the judgment of the Supreme Court in the case of Commissioner of Income tax vs. Patel Brothers & Co. reported at 215 ITR 165.

In view of the above discussion, this Reference is remanded back to ITO, who shall decide the same in accordance with law. In this view of the matter, question no.1 need not be answered.

Reference stands disposed of accordingly. No order as to costs.

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